

# The Motorist Protection Act

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Q: "Hey! That new gun law means I can carry a gun in my car, right?"  
A: "Well, not quite. It's a little more complicated than that."

There are a lot of things that are "common knowledge" that are dead wrong. When "traveling" was the usual defense to a charge of unlawfully carrying weapons, many people thought they could bring a handgun if they crossed two county lines, or stayed overnight. Some people suggest if you are forced to shoot a bad guy outside your house, you should drag the body inside before dialing 911. I have also heard the term "Misdemeanor Murder" used to describe the life of an undesirable person. A few people have suggested that you can rely on the common-law defense "He needed killing." In the real world, taking someone's life is a very serious matter, and carrying a gun is a serious responsibility. It is not a good idea to rely on these "folk wisdom defenses" to keep your freedom.

This column discusses when Texas law allows you to carry a handgun, or keep one in your car. Put another way, if a law enforcement officer finds you with a handgun, how can you avoid being arrested, prosecuted, or convicted for "unlawfully carrying a weapon"? To answer these questions we must look at some other laws. Keep in mind that this is a magazine column. It does not consider your particular circumstances, and there is not enough room to fully discuss the law. ***Do not*** rely on any magazine column for legal advice!

**"Prohibited Persons"**: Federal law prohibits the following nine categories of persons from possessing firearms, ammunition, and components:

1. Persons who have been convicted of a crime punishable by imprisonment for more than one year (unless their gun rights were restored, for instance by a pardon);
2. Fugitives from justice;
3. Persons addicted to or who use controlled substances;
4. Persons who have been adjudicated as mental defectives, or who have been committed to a mental institution (unless their gun rights were restored);
5. Illegal aliens or persons with nonimmigrant visas;
6. Persons who were dishonorably discharged from the U.S. armed forces;
7. Persons who renounced their U.S. citizenship;
8. Persons subject to protective orders and certain other domestic court orders; and
9. Persons who have been convicted of misdemeanor crimes of domestic violence.

Persons *charged* with felonies are also prohibited from possessing firearms. Persons who are less than 21 years old are not allowed to possess handguns without written permission from their parents. It is very important not to possess guns or ammo if you fall into one of these categories. The other laws that may protect you (CHL law, Motorist Protection Act, FOPA, etc.) only apply if you are legally allowed to possess firearms. Violating these laws can result in imprisonment for up to ten years, and a fine of up to \$250,000.00.

**Unlawful Carrying Weapons**: The UCW law is a general prohibition on "carrying a handgun." "Carrying" includes having the handgun where it is accessible in your vehicle. A violation is generally a Class A Misdemeanor, punishable by a fine of up to \$4,000.00 and confinement for up to one year. If it occurs on the premises of a business licensed to sell alcoholic beverages, it is a third degree felony. This law means that in general, it is illegal to possess handguns in Texas unless you have a legal justification for doing so.

**"Traveling" and Other Old School Defenses**: There are several exceptions to the UCW law. Some are in the statute itself, and some were created by the courts. These include being on your own premises (your residence, and your business if you are an owner or manager); taking it between your home and business, if you don't do so "habitually"; taking it for repairs or to locate ammunition; taking it home after you purchase it; moving from one residence to another; being at a legitimate hunting or shooting activity; and going directly to and from such an activity. Many of these defenses are obscure, and depend on very old cases. Some of them are "affirmative defenses" or "exemptions," which means the burden will be on you to present evidence to establish them. But they could be very important, if for some reason you are charged with UCW and none of the other defenses are available.

**Concealed Handgun License**: If you have a CHL, you can carry a gun wherever you want in Texas, except for those specific places prohibited by state law (including schools, sporting events, correctional facilities, certain hospitals, courts, secured areas of airports, places with "51%" or "30-06" signs, and other specific places) or federal law (Gun Free School Zones, federal installations, and other places). Your CHL allows you to keep a gun in your car in most other places where you might drive or park the car, with the possible exception of federal installations. You can also carry one in other states which have reciprocity agreements with Texas, or which recognize Texas CHL's. Of course you have to keep it concealed and comply with the other applicable laws. If you are traveling in another state, you have to comply with their laws, not Texas laws. For instance, Texas allows CHL holders to carry in places of worship, unless they are posted. Other states do not. If you take a gun when you travel to other states, you should research their laws.

**The Firearms Owners' Protection Act**: FOPA is a federal law that generally allows a person to transport a gun from one place where he or she is legally allowed to possess it, to another place in another state where he or she is legally allowed to possess it. The gun must be unloaded and locked in a separate compartment (such as your trunk) where it is inaccessible.

**The Motorist Protection Act**: Finally, we come to the Motorist Protection Act. This is a law that protects law-abiding citizens from being arrested for or charged with UCW. The Motorist Protection Act was passed in 2007, but it was actually a refinement of a law passed in 2005. I testified as the expert witness for NRA and TSRA when the 2005 law was being considered. But the 2005 law did not solve the problem. Some law enforcement agencies, prosecutors, and other officials insisted on arresting and sometimes prosecuting people, even when they clearly fell within the protection of the 2005 law. So in 2007 TSRA and NRA went back to the Legislature to pass the MPA. Under the MPA, you can keep a handgun in your privately-owned motor vehicle if it is not in plain sight, if you are legally permitted to possess firearms, if you are not a member of a criminal street gang, and if you are not engaged in criminal activity other than a Class C Misdemeanor traffic offense. This means if you are arrested for a more serious crime, such as a DWI, and if a gun is found in your car, you can also expect to be charged with UCW.

**Conclusion**: The CHL law protects those Texans who go to the trouble of obtaining a license, which is about one percent. The Motorist Protection Act protects almost everyone else who keeps a handgun in their car. This means it is the single most significant reform in the history of Texas gun laws, many times more significant than the CHL law. Still, like every law, it has its limits. Before you carry a gun on your person or in your vehicle, you should know the law and make sure you are protected.